
EXHIBIT D TO JOHN SHOTTON DECLARATION



NEW YORK STATE
DEPARTMENT *of*
FINANCIAL SERVICES

Andrew M. Cuomo
Governor

Benjamin M. Lawskey
Superintendent

August 5, 2013

Janet O. Estep
President and Chief Executive Officer
NACHA — The Electronic Payments Association
13450 Sunrise Valley Drive, Suite 100
Herndon, VA 20171

Re: Illegal Online Payday Loans Offered and Sold to New York Customers

Dear Ms. Estep:

We are writing you in connection with the ongoing investigation being conducted by the New York State Department of Financial Services (“DFS” or “Department”) into illegal online payday lending. Payday loans are short-term loans, typically an advance on a future paycheck or other income source. Usurious payday loans are illegal in New York, and such loans are void and unenforceable. Under General Obligations Law § 5-501 and Banking Law § 14-a, loans or forbearances under \$250,000, made by non-bank lenders, with an interest rate exceeding 16 percent per annum, constitute civil usury and are illegal. Further, under New York Penal Law §§ 190.40-42, loans made in New York with an interest rate exceeding 25 percent per annum constitute criminal usury.

The Department has uncovered dozens of out-of-state lenders that have used the Internet to solicit and provide illegal payday loans to consumers in New York. Typically, these lenders charge fees that, when annualized, result in interest rates far in excess of the legal limit. New York consumers who take out these supposedly short-term loans quickly get caught in a vicious cycle of long-term debt; the loans become difficult if not impossible to pay off due to the triple- and quadruple-digit interest rates, together with overdraft fees. To address this unlawful activity, DFS today sent letters to 35 payday lenders directing them to cease and desist offering to lend and lending monies at usurious rates in New York. The lenders include:

- ABJT Funding, LLC d/b/a Dollar Premier
- Advance Me Today
- American Web Loans
- Archer Direct, LLC
- Bayside Loans
- BD PDL Services, LLC d/b/a Bottom Dollar Payday
- Blue Sky Finance, LLC d/b/a ExtraFunds Cash
- BS Financial Group Inc. d/b/a Payday Accelerated

- Cash Jar
- Cash Yes
- Discount Advances
- DMA Financial Corp. d/b/a VIP Q-Loot
- Eastside Lenders, LLC
- Fast Cash Personal Loans
- Golden Valley Lending
- Government Employees Credit Center, Inc. d/b/a Cash Direct Express
- Great Plains Lending, LLC
- Horizon Opportunities, LLC d/b/a Lifestyle Services
- Loan Point USA Online
- MNE Services, Inc. d/b/a AmeriLoan, UnitedCashLoans, US Fast Cash, 500 Fast Cash
- MobiLoans, LLC
- MyCashNow.com, Inc.
- National Opportunities Unlimited, Inc. d/b/a Itsmypayday.com, TheCashSpot.com
- Northway Broker Ltd. d/b/a Zip19
- PayDayMax, Ltd.
- Peak 3 Holding, LLC d/b/a iCashLoans
- Plain Green, LLC
- Red Rock Tribal Lending, LLC d/b/a CastlePayday.com
- SCS Processing d/b/a Everest Cash Advance
- SFS, Inc. d/b/a One Click Cash, Preferred Cash Loans
- Sonic Cash
- Sure Advance, LLC
- Tribal Credit Line d/b/a Quick Credit 911
- United Consumer Financial Services, Inc. d/b/a EZPaydayCash
- Western Sky Financial, LLC

DFS will aggressively pursue appropriate enforcement against payday lenders that refuse to cease and desist from their illegal activity in New York.

Illegal payday loans made over the Internet are made possible in New York by credits and debits that must pass through the Automated Clearing House (“ACH”) network. The current ACH network appears to allow illegal loans to flow through New York without sufficient mechanisms to prevent or block these debits or credits as they occur. According to an Operational Bulletin released recently by NACHA, the borrower’s bank, or the Receiving Depository Financial Institution (“RDFI”), “has no basis or information to make an independent judgment as to whether any specific transaction was properly authorized and relates to a bona fide, legal transaction.” ACH Operations Bulletin #2-2013, High-Risk Originators and Questionable Debit Activity, March 14, 2013. The RDFI only becomes aware of the “questionable debit activity when it is contacted by its customer.” *Id.* This is deeply concerning to the Department. The RDFIs would be a great asset in preventing their customers from being victimized by these illegal loans if they were aware of questionable activity before such debits were made. We also understand that NACHA places the onus on the banks originating the debits, also known as the Originating Depository Financial Institutions (“ODFIs”), as “gatekeepers of the ACH Network,” to conduct sufficient due diligence consistent with NACHA

Operating Rules. Nevertheless, the Department's action today demonstrates that illegal payday loans are getting through the system. As such, changes to the ACH network will most likely be necessary.

Access to the ACH system is the foot in the door that online payday lenders need to prey on vulnerable New Yorkers. And banks have proven to be – even if unintentionally – an essential cog in the vicious machinery that these purveyors of predatory loans use to make an end-run around New York law.

We are requesting that you work with us to choke off ACH access to the 35 illegal lenders DFS's investigation has identified to date, as well as the broader illegal payday lending industry. Doing so is in the best interest of your member banks and their customers.

We look forward to your prompt cooperation to stamp out these pernicious, illegal payday loans in New York. To further that undertaking, we request the opportunity to meet with you and your designees. Please contact at your earliest convenience Executive Deputy Superintendent Joy Feigenbaum, Financial Frauds & Consumer Protection, at (212) 480-6082, to set up a mutually convenient time to meet. We look forward to working with you on this important issue.

Very truly yours,



Benjamin M. Lawsky
Superintendent of Financial Services

cc: Members of NACHA's Board of Directors

- Elliot H. Berman, Senior Vice President, General Counsel, Chief Risk Manager & Secretary, Johnson Financial Group
- Janet Boyst, Executive Vice President, Operations & Technology, Atlantic Capital Bank
- Mary Burchette, Senior Vice President, Global Treasury Management, U.S. Bank
- Robert D. Edwards, Executive Vice President, PNC Bank
- Chet Kimmell, President & CEO, Neighborhood Credit Union
- Judy D. Long, Executive Vice President & COO, First Citizens National Bank
- John E. Lucas, CCM, Managing Director, Treasury Services, BNY Mellon
- Cynthia Murray, Head, Global Payment & Channel Solutions, Bank of America Merrill Lynch
- Rick Rhoads, Senior Vice President, State Employees' Credit Union
- William J. Schoch, President & CEO, Western Payments Alliance
- Dennis Simmons, AAP, President & CEO, SWACHA – The Electronic Payments Resource
- Amy Smith, AAP, CAE, President & CEO, The Payments Authority, Inc.

- David Willis, Senior Vice President, Debit Cards & Funds Services, Navy Federal Credit Union
- Sayantan Chakraborty, Managing Director, North America Head of Payments, Citibank, N.A.
- Craig Vaream, Managing Director, Product Executive, J.P. Morgan
- Richard Burke, Jr., Executive Vice President, Corporate Products & Services, TD Bank, N.A.
- Pat Thelen, Executive Vice President, Treasury Management, Capital Markets & International Banking, UMB Bank, N.A., NACHA Chairperson
- Colleen J. Taylor, Executive Vice President, Treasury Management, Capital One, NACHA Vice Chairperson
- Russell K. Oatman, Senior Vice President, Corporate Treasury Services Group, First National Bank of Omaha, NACHA Secretary/Treasurer